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In The

Supreme Court of the United States

October Term, 1996

C.J. MOZZOCHI,

Petitioner,

vs.

FREEDOM OF INFORMATION COMMISSION
and TOWN OF GLASTONBURY,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of the State of Connecticut

RESPONDENTS' BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
Introduction	1
Statement of Facts	1
Judicial History	1
The Petition For Certification To The United States Supreme Court	3
Conclusion	10

TABLE OF CITATIONS

Cases Cited:

Mozzochi v. Borden, et al., 959 F.2d 1174 (2d Cir. 1992)	6, 7
Mozzochi v. Rogers, Civil No. 3:93 CV1229 (D. Conn. 1994)	6
United States v. Martin-Trigona, 767 F.2d 35, 759 F.2d 1017, 756 F.2d 260 (2nd Cir. 1985)	9

Statutes Cited:

Conn. Gen. Stat. § 1-21i(b)	4
Conn. Gen. Stat. § 1-21i(b)(2)	1, 6, 9
Conn. Gen. Stat. § 1-21i(b)(3)	1, 7, 9

Contents

Page

Conn. Gen. Stat. § 1-21L 1, 4, 7, 9

Conn. Gen. Stat. § 52-568(b) 1, 9

United States Constitution Cited:

First Amendment 6

Rule Cited:

Supreme Court Rule 10 3

Other Authorities Cited:

Connecticut Public Act 93-191 ..... 1, 8, 9

Connecticut Freedom of Information Commission 92-240 4

Connecticut Freedom of Information Commission 92-257 4

Freedom of Information Commission Revised Advisory Opinion #71 ..... 2, 9

APPENDIX

Appendix A — Relevant Statutes 1a

INTRODUCTION

The Connecticut Freedom of Information Commission and the Town of Glastonbury, Connecticut, join in this Response in Opposition to the Petition for Certification. The Petitioner has presented skeletal, selective views of the Petitioner, the history of protracted litigation; and the multitude of frivolous lawsuits, court appeals and administrative appeals initiated by the Petitioner over the past fifteen years; all for the sole purpose of harassment of and retaliation against State and Town officials and their counsel, for imagined transgressions. The result is a profoundly misleading Petition.

STATEMENT OF FACTS

In four docketed cases, the Petitioner appealed to the Connecticut Superior Court from eight adverse decisions of the Connecticut Freedom of Information Commission ("FOIC"). In five of those decisions the FOIC had dismissed complaints raised by the Petitioner to it, while in the other three, the FOIC had denied the Petitioner a hearing pursuant to Conn. Gen. Stats. § 1-21i(b)(2) and (3), as amended by Connecticut Public Act 93-191. The fifth case appealed involved an injunction sought by the Town of Glastonbury ("Town") and granted by the Superior Court pursuant to § 52-568(b) and § 1-21L, Conn. Gen. Stat. as amended. The Connecticut Superior Court (Freed, J.) decided all eight administrative appeals and the injunction action in one consolidated opinion. *See* Memorandum of Decision attached in Lodging.

JUDICIAL HISTORY

The most recent judicial history is this: In 1993, the FOIC dismissed all eight of the Petitioner's Freedom of Information Act ("FOIA") appeals and levied fines after finding, based on a

voluminous record, that the appeals were frivolous, unreasonable and solely for the purpose of harassment; constituted an abuse of the FOIC's administrative process, and would perpetuate an injustice. For a summary of Petitioner's conduct and findings *see* Petitioner's statements and Freedom of Information Commission ("FOIC") Revised Advisory Opinion #71, and samples of the Petitioner's "works," in Lodging.

The Petitioner filed statements in June, 1993, with the FOIC saying that in retaliation for those decisions he would not only appeal those decisions to the Superior Court and higher, but he would also commence actions against Town officials and FOIC members and counsel in the Federal and State Courts. He thereafter initiated two federal actions and three state court actions as he had threatened to do, as well as well as the administrative appeals. *See* statements filed by the Petitioner with the FOIC, in Lodging.

Both federal actions and all state court actions ended with dismissals or forced withdrawals (Summary Judgment or Dismissal Motions pending). All administrative appeals were dismissed and a permanent injunction was entered against the Petitioner, prohibiting further abusive FOIA requests and appeals such as therein specified and identified.[1] The Petitioner then appealed all decisions to the Connecticut Appellate Court.

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1. The injunction only addressed and prohibited further frivolous, unreasonable and harassing requests such as the "Blanket" voluminous requests requiring searches, copying, redaction of personal or exempt information and re-copying, such as "all teacher job applications," "all town employee job applications," "all police officer job applications," 100 closed town attorney files; and the "Serial" or successive requests, such as, the police daily log for different days in different months for a ten year period; tax records for all properties on different arterial roads; that had been made by the Petitioner and were involved in the eight FOIC decisions.

The Connecticut Appellate Court on March 11, 1997 affirmed all Superior Court decisions on appeal. That court, on April 2, 1997, denied a Motion for Reargument, with notice being sent on April 3, 1997. On June 11, 1997, the Connecticut Supreme Court denied the Petitioner's Petition for Certification filed in that court.

THE PETITION FOR CERTIFICATION TO THE UNITED STATES SUPREME COURT

A Petition for Certification from a denial of certification by the Connecticut Supreme Court, must satisfy the criteria of the Rules of The Supreme Court. Rule 10 states as follows:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of

> appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The voluminous Records in all nine matters involved in these appeals, and the applicable law, fully and convincingly support the decisions of the FOIC, the Superior Court, the Connecticut Appellate Court, and the Connecticut Supreme Court.

These decisions and Conn. Gen. Stat., § 1-21i(b) and § 1-21L, address and protect against only the kind of *extreme, continuous* misuse and abuse of the Connecticut Freedom of Information Act ("FOIA") that has occurred here and that was promised by the Petitioner for the future. In his "Reply To Motion To Dismiss Above Complaint-Appeals" in Connecticut Freedom of Information Commission ("FIC") 92-240 and 92-257, the Petitioner stated:

> 6. Since during the next twenty to twenty-five years I shall be making hundreds, perhaps even thousands of requests for documents from various Town officials in Glastonbury, it would behoove Rogers to instruct all Town officials to reply to me within the statutory time limit that they intend

> to comply with my request. In this way they will avoid the presently-uncomfortable situation.

The decisions in the Petitioner's Connecticut and Federal Court actions and Appeals certainly do not impact upon public policy or the public interest generally. They affect only the Petitioner and harassing conduct like his, and rightly so. He ***is not*** prevented from fully utilizing the Connecticut FOIA and making requests for public records within the broad parameters otherwise allowed by the FOIA.

The Petitioner has merely been obliged to observe and comply with the laws and statutes of Connecticut and to end his extreme misuse and abuse of the FOIA as a tool of harassment and retaliation. He has been obliged to do nothing more than all responsible citizens are expected and obliged to do in a free society, in the exercise of the *privileges* we all enjoy. United States District Judge Nevas held in his Federal Court decision dismissing the Petitioner's action there that there is no right to harass public officials and abuse the litigation process. *Please see* page 10 of decision attached in Lodging.

Rather than being a case of first impression, contrary to the Petitioner's representations and assertions, these appeals and all of the issues presented and decided therein, are cases of many prior "impressions" in the United States Court of Appeals, Second Circuit; the United States District Court of Connecticut; Connecticut Appellate Court, the Connecticut Superior Court; and the Freedom of Information Commission.

The Petitioner's free speech rights, conduct and actions have been fully reviewed. Most recently in the United States District Court, as well as the United States Court of Appeals, Second Circuit, all of the Petitioner's claims arising out of the same

conduct, actions and FOIC decisions here involved were thoroughly researched and decided in a detailed decision in *Mozzochi v. Rogers*, Civil No. 3:93 CV1229 (D. Conn. 1994) (Nevas, J.) in the Lodging. *See also Mozzochi v. Borden, et al.*, 959 F.2d 1174 (2d Cir. 1992); The "death article" that caused the latter litigation is also in the Lodging.

Next, the Connecticut Superior Court again reviewed all of the FOIC decisions, the records thereof, and the Petitioner's claims in a brief of some eighty plus pages, and, after hearing hours of the Petitioner's argument, again decided that there was no factual or legal merit to be found. The Connecticut Appellate Court went through the same process of review and evaluation and affirmed the decisions of the Superior Court.

As to any claimed First Amendment violations, the Petitioner's unexpressed, secret motives or his purported or proposed uses for the records and information he demanded were not the basis for the Freedom of Information Commission's findings and decisions in these appeals. His motives were his own, were unexplored by the FOIC, and were treated as irrelevant.

It was the Petitioner's continuous, escalating *conduct and actions* over the past fifteen years that provided the basis for the findings and decisions of the FOIC, the Superior Court and the Appellate Court, just as such conduct and actions had provided the basis for the decisions of the United States Court of Appeals and the United States District Court, before them. The Petitioner had made hundreds of requests requiring searches and production of thousands of pages of records. The Respondent Town had promptly complied with all but those here involved that were frivolous, unreasonable and harassing on their face.

The remedial provisions of the FOIA in § 1-21i(b)(2) and

(3), and § 1-21L, focus on the *purpose* of the FOIA appeals and the requests involved. *See* full text in Appendix 1a. That is what the FOIC, the Connecticut Superior Court, and the Connecticut Appellate Court focused and relied upon, as well.

The nature, scope, manner, magnitude, frequency, and voluminous character of the Petitioner's FOIA requests and complaints — appeals to the FOIC, over a fifteen year period, his conduct and actions and the facts and circumstances surrounding the same, were the evidence, the proof of purpose, that were the basis for the findings and decisions there.

The Petitioner's belated attempt here to implicate his free speech to create a constitutional issue is transparent and ineffective. The United States District Court of Connecticut fully analyzed and researched this particular constitutional claim, as well as others, and clearly rejected them in the Petitioner's lawsuit there. *See Mozzochi v. Rogers, et al.*, cited above.

No Town official or employee, no FOIC member or staff has ever so much as hinted at attempting to in any way effect Petitioner's free speech in any of its forms. Mr. Mozzochi has freely, fully and frequently exercised his right to free speech up to and far beyond any constitutional parameters of that right, continues to do so, and he may, can and will continue to do so in the future, unhampered by the Defendant-Appellees, or by any commonly accepted standards of truth, ethics, or decency. *See* recent examples in Lodging. There is no factual or legal basis for this Court to be concerned about that. Nor has any been presented by the Petitioner.

There is *no* public purpose or other useful purpose to be served by prolonging this frivolous, unreasonable and harassing litigation. Quite the opposite. The Petitioner freely and

knowingly chose to act for and represent himself, and has enjoyed the commencement and conduct of the appeals as well as several other cases in the Federal and State Courts, free of any professional or ethical constraints. Throughout the multiple, full hearings before the Freedom of Information Commission, the Superior Court, and the Appellate Court, as well as the United States District Court, the plaintiff has been consistently shown courtesy, kindness, patience and even indulgence and great latitude, in all proceedings, procedures and arguments.

He has repeatedly stated in oral argument and in memoranda that he has regularly sought and received advice from an apparent panel of "three very highly regarded attorneys". Indeed, he has displayed a degree of adeptness in his unusually frequent filings of motions, pleadings and memoranda, many unauthorized and overlong, which indicate such drafting and advice along the long way as to form, substance and language.

With a doctorate in mathematics, the Petitioner cannot now convincingly claim or argue ignorance, lack of understanding or perceived vagueness in the common, ordinary words and language of the Freedom of Information Act. He claims to have embraced and researched far more complex and sophisticated concepts and theories than that. That aside, no *ordinary person* would or should have any difficulty whatever in understanding the clear language of these provisions. *Please see* full text in Appendix.

The standards set by the Act as amended by P.A. 93-191 for the level of abuse and misuse required to implement its relatively mild and restricted remedial provisions are exceptionally high and difficult to satisfy. Only a continuous course of extreme conduct obvious to the most dedicated advocate of open government will suffice. That has been the role of the FOIC through the years, and the members, director

and staff have vigorously performed that role. Only the facts, conduct and actions of the plaintiff, fully established in a solid, voluminous record compiled over a 15 year period led the FOIC to make the findings and decisions here involved.

Referencing the procedure adopted by United States Court of Appeals, Second Circuit, in 1985, *United States v. Martin-Trigona*, 767 F.2d 35, 759 F.2d 1017, 756 F.2d 260, in dealing with Martin Trigona's misuse and abuse of the Federal Courts and Judiciary; and following the suggestions of Connecticut Superior Court Judge Spada for a legislative action and remedies; the FOIC recommended and the Legislature properly combined the pre-existing provisions for fines and for injunctive relief in § 52-568(b) with a pre-screening process, in P.A. 93-191, both of which are now embodied in § 1-21(b)(2) and (3), and § 1-21L.

Martin Trigona's then extraordinary misuse and abuse of the judicial process and judicial officers pales in comparison with Mr. Mozzocchi's 15 year misuse and abuse of the FOIA appeals process, the State administrative appeals process, the Connecticut Courts and the Federal Courts, to say nothing of the Town and State officials who have borne the brunt of his conduct as his targets for harassment and retaliation. *See* FOIC Revised Advisory Opinion No. 71 and the Petitioner's June 18, 1993 and June 23, 1993 responses attached.

The challenged constitutionality of the actions of the Respondents is groundless. The Connecticut Appellate Court, and Connecticut Superior Court decisions are not in disagreement with the United States Supreme Court precedent. Moreover, these decisions followed the United States District Court decision that had already decided the very same issues between the very same parties.

The Petitioner himself *has failed at all times* during the extensive procedures below to advance *any* factual or legal basis for any of his imagined constitutional claims. Petitioner's claims are so bankrupt of validity that they cannot possibly approach the kind of public interest issue that would justify United States Supreme Court interest.

CONCLUSION

The legal issues decided in these cases do not in any way warrant United States Supreme Court review. They are not in contravention of any such precedent, are not issues of first impression, and do not present any issues of public importance. The Petitioner's cases are archetypically ones which are of primary interest to Petitioner alone and to no one else except in a negative sense.

It is long past time to close and inter this seemingly interminable, repetitious litigation. The Petitioner has commanded far too much time, attention and State and Town taxpayer dollars in his unprecedented, fifteen year continuous course of harassment and retaliation for imagined wrongs by his perceived enemies (as the FOIC aptly characterized his conduct). Several judges, in both the State and Federal courts, have agreed and deemed such conduct to be groundless, frivolous and for the sole purpose of harassment.

The Respondents here in fairness and justice should not be subjected to or required to bear any further burdens of time, effort and expense in this litigation.

Respectfully submitted,

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APPENDIX A — RELEVANT STATUTES

Conn. Gen. Stats. § 1:21i

Sec. 1-21i. Denial of access to public records or meetings. Appeals. Notice. Orders. Civil penalty. Service of process upon commission. Frivolous appeals. (a) Any denial of the right to inspect or copy records provided for under section 1-19 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-20a, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b) (1) Any person denied the right to inspect or copy records under section 1-19 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, 1-20a and 1-21 to 1-21k, inclusive, may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed within thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed within thirty days after the person filing the appeal receives notice in fact that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken. Upon receipt of such notice, the commission shall serve upon all parties, by certified or registered mail, a copy of such notice together with any other

notice or order of such commission. In the case of the denial of a request to inspect or copy records contained in a public employee's personnel or medical file or similar file under subsection (c) of section 1-20a, the commission shall include with its notice or order an order requiring the public agency to notify any employee whose records are the subject of an appeal, and the employee's collective bargaining representative, if any, of the commission's proceedings and, if any such employee or collective bargaining representative has filed an objection under said subsection (c), the agency shall provide the required notice to such employee and collective bargaining representative by certified mail, return receipt requested or by hand delivery with a signed receipt. A public employee whose personnel or medical file or similar file is the subject of an appeal under this subsection may intervene as a party in the proceedings on the matter before the commission. Said commission shall, after due notice to the parties, hear and decide the appeal within one year after the filing of the notice of appeal. The commission shall adopt regulations in accordance with chapter 54, establishing criteria for those appeals which shall be privileged in their assignment for hearing. Any such appeal shall be heard within thirty days after receipt of a notice of appeal and decided within sixty days after the hearing. If a notice of appeal concerns an announced agency decision to meet in executive session or an ongoing agency practice of meeting in executive sessions, for a stated purpose, the commission or a member or members of the commission designated by its chairperson shall serve notice upon the parties in accordance with this section and hold a preliminary hearing on the appeal within seventy-two hours after receipt of the notice, provided such notice shall be given to the parties at least forty-eight hours prior to such hearing. If after the preliminary hearing the commission finds probable cause to believe that the agency decision or practice is in violation of

sections 1-18a and 1-21, the agency shall not meet in executive session for such purpose until the commission decides the appeal. If probable cause is found by the commission, it shall conduct a final hearing on the appeal and render its decision within five days of the completion of the preliminary hearing.

(2) In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection (c) of this section, the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, 1-20a, and 1-21 to 1-21k, inclusive. The commission may declare null and void any action taken at any meeting which a person was denied the right to attend and may require the production or copying of any public record. In addition, upon the finding that a denial of any right created by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars. If the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars. The commission

shall notify a person of a penalty levied against him pursuant to this subsection by written notice sent by certified or registered mail. If a person fails to pay the penalty within thirty days of receiving such notice, the superior court for the judicial district of Hartford-New Britain* shall, on application of the commission, issue an order requiring the person to pay the penalty imposed. If the executive director of the commission has reason to believe an appeal under subdivision (1) of this subsection or subsection (c) of this section (A) presents a claim beyond the commission's jurisdiction; (B) would perpetrate an injustice; or (C) would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for hearing without first seeking and obtaining leave of the commission. The commission shall provide due notice to the parties and review affidavits and written argument that the parties may submit and grant or deny such leave summarily at its next regular meeting. The commission shall grant such leave unless it finds that the appeal: (i) Does not present a claim within the commission's jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute an abuse of the commission's administrative process. Any party aggrieved by the commission's denial of such leave may apply to the superior court for the judicial district of Hartford-New Britain*, within fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal.

(3) In making the findings and determination under subdivision (2) of this subsection the commission shall consider the nature of any injustice or abuse of administrative process, including but not limited to: (A) The nature, content, language or subject matter of the request or the appeal; (B) the nature, content, language or subject matter of prior or contemporaneous requests or appeals by the person making the request or taking

the appeal; and (C) the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from the person making the request or taking the appeal.

(4) Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that the agency has not violated the Freedom of Information Act.

(c) Any person who does not receive proper notice of any meeting of a public agency in accordance with the provisions of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, may appeal under the provisions of subsection (b) of this section. A public agency of the state shall be presumed to have given timely and proper notice of any meeting as provided for in said sections if notice is given in the Connecticut Law Journal or a Legislative Bulletin. A public agency of a political subdivision shall be presumed to have given proper notice of any meeting, if a notice is timely sent under the provisions of said sections by first-class mail to the address indicated in the request of the person requesting the same. If such commission determines that notice was improper, it may, in its sound discretion, declare any or all actions taken at such meeting null and void.

(d) Any party aggrieved by the decision of said commission may appeal therefrom, in accordance wish the provisions of section 4-183. Notwithstanding the provisions of section 4-183,

in any such appeal of a decision of the commission, the court may conduct an in camera review of the original or a certified copy of the records which are at issue in the appeal but were not included in the record of the commission's proceedings, admit the records into evidence and order the records to sealed or inspected on such terms as the court deems fair and appropriate, during the appeal. The commission shall have standing to defend, prosecute or otherwise participate in any appeal of any of its decisions and to take an appeal from any judicial decision overturning or modifying a decision of the commission. If aggrievement is a jurisdictional prerequisite to the commission taking any such appeal, the commission shall be deemed to be aggrieved. Notwithstanding the provisions of section 3-125, legal counsel employed or retained by said commission shall represent said commission in all such appeals and in any other litigation affecting said commission. Notwithstanding the provisions of subsection (c) of section 4-183 and section 52-64, all process shall be served upon said commission at its office. Any appeal taken pursuant to this section shall be privileged in respect to its assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state, including informations on the relation of private individuals. Nothing in this section shall deprive any party of any rights he may have had at common law prior to January 1, 1958. If the court finds that any appeal taken pursuant to this section or section 4-183 is frivolous or taken solely for the purpose of delay, it shall order the party responsible therefor to pay to the party injured by such frivolous or dilatory appeal costs or attorney's fees of not more than one thousand dollars. Such order shall be in addition to any other remedy or disciplinary action required or permitted by statute or by rules of court.

(e) Within sixty days after the filing of a notice of appeal

alleging violation of any right conferred by sections 1-15, 1-18a, 1-19 to 1-19c, inclusive, 1-20a and 1-21 to 1-21k, inclusive, concerning records of the Department of Environmental Protection relating to the state's hazardous waste program under sections 22a-448 to 22a-454, inclusive, the Freedom of Information Commission shall, after notice to the parties, hear and decide the appeal. Failure by the commission to hear and decide the appeal within such sixty-day period shall constitute a final decision denying such appeal for purposes of sections 1-21i and 4-183. On appeal, the court may, in addition to any other powers conferred by law, order the disclosure of any such records withheld in violation of sections 1-15, 1-18a, 1-19 to 1-19c, inclusive, 1-20a and 1-21 to 1-21k, inclusive, and may assess against the state reasonable attorney's fees and other litigation costs reasonably incurred in an appeal in which the complainant has prevailed against the Department of Environmental Protection.